

Order

Michigan Supreme Court
Lansing, Michigan

Entered: July 23, 2002

Maura D. Corrigan,
Chief Justice

2001-47

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendments of Rule 2.102
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.102 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposal or to suggest alternatives. Before adoption or rejection, the proposal will be considered by the Court at a public hearing. Notice of future public hearings will be posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language of MCR 2.102 would be amended as indicated below.]

Rule 2.102 Summons; Expiration of Summons; Dismissal of Action for Failure to Serve

(A) - (C) [Unchanged.]

(D) Expiration. A summons expires 91 days after the date the complaint is filed. However, within that 91 days, on a showing of ~~good cause~~ due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the 91-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E) - (G) [Unchanged.]

Staff Comment: The proposed amendment of subrule (D) would codify *Bush v Beemer*, 224 Mich App 457 (1997), which held that a plaintiff can obtain a new summons only on a showing of due diligence in actual efforts to serve the original summons. A plaintiff who has not made duly diligent attempts to serve the summons would not be able to obtain a second summons even if service attempts were deferred for arguably valid reasons, for example, settlement negotiations. Cf., *Richards v McNamee*, 240 Mich App 444 (2000).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk in writing or electronically by November 1, 2002, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When filing a comment, please refer to file 2001-47. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.